

2007 KDI International Conference

Competition Policy in Regulated Sectors:
Focusing on the Institutional Design of the Relationship between
Competition Authority and Sectoral Regulators

규제산업의 경쟁정책:
각 산업의 감독당국과 경쟁당국 간 관계에 대한 제도 설계를 중심으로

July 10~11, 2007

Main Conference Hall
Korea Development Institute

Restructuring Ministerial Organizations for the Contents and Media Convergence

Dongwook Kim

Professor of Graduate School of Public Administration

Seoul National University

dong@snu.ac.kr

2007 International Conference

Competition Policy in Regulated Sectors

July 11, 2007

KDI Main Conference Hall

Contents

- I. Introduction
- II. Mission and function of Government Organizations in Contents & Media Sector
- III. Alternatives of Government Organizations in Contents & Media Sector
- VI. Final Comments; Regulatory Body in Contents & Media Sector and Fair Trade Commission

I . Introduction

1. Media Convergence

Broadcasting is planning, programming and transmitting program to general public and is a special type of telecommunication. Telecommunication regulatory system on technical standard, spectrum allocation, and network access has developed as various networks and devices have appeared. Broadcasting regulatory system on ethics and fairness of program has developed as broadcasting program has gained social and political influence.

Media convergence(or Digital convergence) starts from that all types of devices such as PC, mobile phone, PDA, TV, and set-top box and services are connected through electronic network. All the media such as wired and wireless communication, broadcasting, internet, and cable and satellite TV can't stand alone and are connected in the name of one-source-multi use, wired & wireless, telecommunication & broadcasting, ubiquitous, and broadband network. Related business and industry compete and cooperate with each other. The boundary between telecommunication and broadcasting is blurred and one network carries telecommunication and broadcasting services together.

2. Converged Service in Korea

Almost Cable TV operators carry high speed internet access services and gain 3 million subscribers and launch internet phony(VoIP) service.

Satellite DMB(Digital Multimedia Broadcasting) service launched in 2005 and is provided to 1.2 million subscribers and terrestrial DMB launched in 2006 reaches 3-4 million receiver holders. Main DMB device is one combined with mobile phone of which subscribers are 40 millions out of 48 million people.

Telecommunication carrier has tried to introduce IPTV(Internet Protocol TV)

which carries real time and delayed broadcasting program as well as VOD service since 2005. Cable TV operators has resisted to the IPTV's introduction into the audio-video service market and argued that IPTV is not differentiated from digital cable TV and the same strict regulation as cable TV is applied to IPTV. Ministry of Communication(MIC) support the Telco's position that IPTV is a new converged service and light regulation is applied to IPTV, while the Korean Broadcasting Commission(KBC) tries to apply their regulatory jurisdiction to IPTV. If current broadcasting law applies for IPTV, no Telco in Korea can passed the license condition of broadcasting business.

President and prime minister intervene into the conflict among Telco, internet and cable TV business and appointed advisory committee for converged service launching and government organization restructuring in the late July of 2006. The committee made out some reports for organizing broadcasting & communication commission and launching IPTV, both of which rely on new law. National Assembly composed special standing committee of broadcasting & communication, which reviews bills for organizing broadcasting & communication commission and launching IPTV. Most of political analysts expect that all the bills are killed in the current term of National Assembly because there is no agreement between MIC and KBC nor between Telecommunication carriers and Cable TV operators.

All the agents involved in media convergence such as political parties, government officials, business, and policy advisory group expect that next president's administration(inaugurates in February 2008) will take care of restructuring government organization, IPTV and the other media convergence issues. Presidential election takes place in December 2007 and president elected will decide to reorganize his administration's executive ministries including one handling digital contents and network and newly set ministry(or commission) take care of the IPTV bills.

II. Mission and Function of Government Organizations in

Contents & Media Sector

1. Mission of Government Organizations in Contents & Media Sector

Government organizations try to promote industry development and improve the variety, quantity and quality of services and finally enhance user's(consumer's) welfare in their sector. Government agency promotes competence of industry by providing professional manpower, assisting R&D, building infrastructure, and improving international relations as well as directly providing business with tax and financial subsidy, technical knowhow and information and so on.

Government usually fulfills their public purpose by regulation. Various regulatory tools such as entrance regulation(licensing), fair competition, public service obligation, universal service, consumer protection, technical standards, spectrum management, obscenity and violence, and political fairness has deployed in the media sector.

Good government organizational structure support the efficient and fair operation of government service to business and general public. Government draws plans and bills, obtains budget, knowledge, and political support, distributes benefits and subsidy toward business, regulates business and sanctions illegal doings.

Trapped in the inter-organizational conflict, neither MIC nor KBC could have taken appropriate action for media convergence issues such as policy coordination and functional adjustment for promoting or regulating converged services since 2000 when KBC was founded.

2. Current Function of Government Organizations in Contents & Media Sector

1) MIC

MIC holds broad jurisdiction over promoting and regulating the media sector and its semi-independent Korea Communications Commission(KCC) shares MIC's regulation implementing authority. MIC holds authorities over network infrastructure and spectrum management for not only telecommunication but also broadcasting.

In telecommunication sector, MIC takes charge in promotion affairs for small and medium business, software industry, digital content industry, network security, information society, research and development, frequency and spectrum development, international exchange and cooperation. MIC hold regulatory power in licensing, approval of price & fee and stipulation, service quality evaluation, and fair competition and KCC handles fine & surcharge, consumer protection, and dispute mediation. MIC controls technical matters such as network security, privacy protection, spectrum allocation and management, and transmission standards.

2) KBC

KBC leads broadcasting planning and laws but share its policy function with MIC for infrastructure and technology, MCT(Ministry of Culture and Tourism) for broadcasting video promotion and broadcasting advertisement, FTC(Fair Trade Commission) for fair trade system for program distribution.

In broadcasting sector, KBC takes charge in promotion affairs such as survey and research, broadcasting development fund, subsidy for public programming. KBC holds regulatory power in business licensing, approval of user fee and stipulation, fine & surcharge, viewer's protection, broadcasting business dispute mediation, and contents' ethics and fairness. KBC hold a limited jurisdiction over fair trade and dispute mediation because the broadcasting law includes loose provisions for fine & surcharge towards disobedience.

3) MCT

MCT has jurisdiction over cinema, video, animation, cartoon, game, music, performing art, sports, traditional arts, classical arts, newspaper, books & magazine, and copyright. In the media sector, MCT promotes digital cultural content industry by way of subsidizing business, protecting copyright, and clustering culture business. MCT and its subsidiary quasi-government commissions and committees handle registration of contents, copyright, content user grading, and monitoring of illegal copying.

3. Inter-organizational Duplicating Function Resulting from Media Convergence

1) Promotion Issues

MIC, MCT and KBC has implemented various policies and programs for contents industry promotion. MIC calls it on-line digital contents, MCT calls it cultural or visual contents, and KBC calls it broadcasting contents(programs). MIC mixes policy for software and digital contents intentionally.

The three organizations have their own public fund; MIC has information & communication promoting fund, KBC has broadcasting development fund, and MCT has culture industry promoting fund. Each organization spends fund money for professional manpower education and training, business subsidy, and survey & research.

MIC supports lots of R&D activities of research institutes and universities. More than 80% of MIC's fund goes for technological development mainly done by ETRI(Electronics and Telecommunications Research Institute; government funded research institute), which succeeded in developing commercial mobile technology for CDMA for the first time in the world. MCT and KBC compete with each other in supporting surveys and policy research on media business and market. MIC and MCT compete with each other in R&D for game software and digital contents development, and DRM(Digital Rights Management).

2) Regulation Issues

KBC legally recommends broadcasting business to MIC but actually permits business license to business and renews the licensing reviewing procedure every 3 years according to the broadcasting law. MIC give station license to business on technical basis according to the radio wave law. Business should renew the KBC's recommendation and MIC's license every 3 years.

MIC and KBC have duplicative regulation over converged services. Data broadcasting service provider should obtain KBC's approval and report its business to MIC. Jurisdiction over webcasting contents review divided. KBC reviews broadcasting business's webcasting contents while MIC's subsidiary Korea Internet Safety Commission reviews the obscenity and violence of other's webcasting contents.

3) Problems of Functional Duplication

The boundary among the jurisdiction of MIC, MCT and KBC is not clear-cut. Budget and personnel is allocated inefficiently on account of duplicative work. The duplication may cause inconsistency of government policy when each of three organizations has its own policy. It may degrade the quality of policy making, delay policy implementation, and increase the administrative costs.

Most negative side of functional duplication is that duplicative regulation appears to be a hindrance against introducing a new converged service. If a new service business should meet all the government organizations' regulation, most of new business opportunities might disappear or start in the other countries. Although technology progresses by leaps and bounds but inefficient regulatory system hinders the service and jurisdiction definition, commercial service launching may be delayed and business and industry may be severely damaged.

III. Alternatives of Government Organizations in Contents & Media Sector

1. Framework for restructuring government organizations

Government proposed the bill for broadcasting & communication commission to National Assembly but current government is minority and the commission's function is not decided clearly yet. The chance the bill pass in National Assembly is quite low and we'd better suggest alternative integrated structure of government organizations in order to effectively cope with media convergence.

1) decision-making type

The broadcasting & communication commission proposed by the bill is a collegiate decision body (commission) belonging to the president. In Korean government, some commission such as Civil Service Commission and Korea Independent Commission Against Corruption belong to the president, while others such as Fair Trade Commission and Financial Supervisory Commission belong to the prime minister.

KBC is a kind of independent commission similar to US independent regulatory commission such as FCC (Federal Communications Commission) and FTC (Federal Trade Commission). From the inauguration day of KBC on, KBC's independence according to the broadcasting law has been criticized as unconstitutional on the reason that executive government agencies should belong to the president, the prime minister or a minister. Independent commission has lots of difficulties in obtaining policy and implementation forces in Korean administrative organizational culture. Now most of interested people agree that agency handling media sector including broadcasting belong to the president or the prime minister.

2) combined system

Now we compare commission type and minister type. Commission type organization has advantages in political neutrality, fair competition, public interest of broadcasting, and expertise while minister type organization has the edge over commission type in speed of decision-making, efficient implementation, and organizational stability in administrative structure. While the advisory committee for media convergence dealt with restructuring government organization in contents and media, all the member of the committee reached at the consensus that promotion function is better executed by minister system than commission system and regulation function is better executed by commission system than minister system. A minister can't handle opinion-forming and politically sensitive issues by himself because press and opposition parties strongly argue for independence of broadcasting business from government nowadays in Korea.

We should design government organizations that handle telecommunications, broadcasting, and converged services together and are effective in policy making and implementing. Neither minister system nor commission system can satisfy the effectiveness and fairness together under the antagonistic political-press atmosphere. It is better idea to combine the two systems for media convergence. The idea of all function in one organization such as Japanese Ministry of Internal Affairs and Communications and US FCC will be pursued in the era of a fully trusted government by press and general public.

The main objective of restructuring government organizations for media convergence is to administer converged services and facilitate a new convergence industry as a national strategic industry as same as consumer electronics in 1980's and ICT in 1990's. President and his minister should play a leading role in government policy making because contents and media sector is emerging rapidly as another growth engine. It is a reasonable idea that one or two ministries take charge in policy making and promotion matters and one regulatory commission implements regulation matters. Regulatory body should be

one for rapid introduction of new services. The two/three government organizations works cooperatively.

2. Development and Comparison for Alternatives

1) Function of the combined system of government organizations

The combined system of one ministry and one commission had better cover the all of the function done by MIC and KBC and broadcasting advertisement and broadcasting video promotion function done by MCT. The postal and financial service of the postal office should transit from government to public corporation in near future. The regulation of ethics and political fairness in content review should be separated from government function and therefore quasi-public commission for content review is to be installed.

2) Alternatives of Ministry and Commission

Policy making ministry can be one ministry or two ministries. Contents and Network function can be divided. 'Alternative A' is the combination of Ministry of Communications and Communications Supervisory Commission. 'Alternative B' is the combination of Ministry of Culture and Communications and Communications Supervisory Commission. 'Alternative C' is the combination of MOCIE(Ministry of Commerce, Industry and Energy), MCT, and Communications Commission.

Under 'Alternative A' Ministry of Communications covers telecommunication, broadcasting, converged services and information society, while MCT covers newspapers, game, music etc. and MOCIE covers consumer electronics. Ministry of Communications has authority of proposing law and implementing ordinance, while Communications Supervisory Commission can make enforcement regulations lower level than implementing ordinances. Alternative A is similar to Italian government system of Ministry of Communications and AGCOM¹⁾.

Content Review Commission is installed separated from Communications Supervisory Commission. Alternative A dominates the other alternatives in implementing feasibility.

Under 'Alternative B' Ministry of Culture and Communications covers telecommunication, broadcasting, converged services and information society and all the functions of current MCT. Ministry of Culture and Communications has authority of proposing law and implementing ordinance, while Communications Supervisory Commission can make enforcement regulations. Alternative B is similar to Australian government system of DCITA(Department of Communications, Information Technology and the Arts) and ACMA(Australian Communications and Media Authority)²⁾. Content Review Commission is installed separated from Communications Supervisory Commission. Alternative B can be feasible when whole ministries are reshuffled in the large ministry and large bureau fashion such as 2001 government reform in Japan(22 ministries ⇒ 12 ministries). Alternative B is good in combining source contents and digital contents.

Under 'Alternative C' MCT covers contents industry promotion affairs, MOCIE makes policy for network, IT and information society promotion affairs, and Communications Commission takes regulatory authority over telecommunication, broadcasting, converged services. Communications Commission has authority of proposing law and implementing ordinance as well as making enforcement regulations. Alternative C is similar to British government system of Department for Culture, Media and Sport, Department for Business, Enterprise and Regulatory Reform and Ofcom(Office of Communications)³⁾. Content Review Commission is installed separated from Communications Supervisory Commission. Alternative C may cause harmful effect on the synergy of integrating policies and programs of contents, network and information society and doing promotion and regulation affairs together. In order for alternative C to

1) AGCOM covers content review function.

2) ACMA has content review function.

3) Ofcom is not government agency but public corporation. The content Board within Ofcom covers contents review function

work effectively, the horizontal cooperation among the organizations is essential.

If president elected seeks a drastic reorganization plan like Japanese government reform 2001 before inauguration on February 2008, alternative B or C may be feasible one. If she/he seeks functional adjustment among ministries, alternative A is feasible one.

VI. Final Comments; Regulatory Body in Contents & Media Sector and Fair Trade Commission

1) Fair Trade Commission's function

Up to now, Fair Trade Commission(FTC) expand its jurisdiction of fair trade and competition toward contents and media sector on account of lack of detailed legal provisions and expertise of MIC and KBC. MIC has installed KCC and developed regulatory scheme over telecommunication industry but KBC can't succeed in building regulatory framework for fair trade, fair competition and dispute mediation over broadcasting. KBC tried to build legal foundation through amending the broadcasting law but all the ministries opposed to the KBC's proposal. FTC has regulatory authority toward media business in term of fair trade, consumer protection. FTC has reviewed M&A and collusion and price-fixing of media business. FTC's subsidiary quasi-public Korea Consumer Agency handles broad range of consumer's complaints and dispute mediation including communication, broadcasting and on-line services.

2) Prospect of Relation between Communications (Supervisory) Commission and FTC

Newly installed regulatory commission covering telecommunication and broadcasting together will challenge the current dominance of FTC's jurisdiction in media sector. Communications Commission has authority of proposing laws and implementing ordinances and will shape its identity and jurisdiction more easily and in shorter period than Communications Supervisory Commission

which should consult with the partner ministry. Communications Commission will make detailed regulation laws in order to increase its regulatory power and reduce the jurisdictional territory of FTC in media sector. But Ministry of Communications or Ministry of Culture and Communications may hesitate to propose regulation laws increasing regulatory power of Communications Supervisory Commission because the ministry might regard the commission as its competitor. As the conference or consultation for law and implementing ordinance proposal takes times, the commission's jurisdiction building delays.

Anyway, Communications (Supervisory) Commission and FTC are expected to compete with each other severely and both will argue that their agencies work for the best interest and right of consumers. For the time being, each organization is expected to make new laws or amend present laws in order to gain regulatory power and expand jurisdiction. Communications (Supervisory) Commission and FTC will try to build expertise in media sector and recruit experts from private and foreign sector as well as government and public sector. I hope the competition between Communications (Supervisory) Commission and FTC will result in less regulation and better services to general public and current and potential business. The converged contents and media sector in Korea deserves for a national strategic industry keeping progress up to world best stage. Inter-agency cooperation is essential for consumer's interest and industrial development.